No. 87-437

Supreme Court, U.S.
FILED
DEC 15 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

RICHARD PINKNEY, *et al.*,

Petitioners,

v.

DOW CHEMICAL CO., *et al.*,

Respondents.

In re "Agent Orange" Product Liability Litigation

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONERS' REPLY MEMORANDUM

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December 9, 1987

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SUMMARY OF THE ARGUMENT

The petition should be granted primarily because the District Court lacked the jurisdiction necessary to rule on this matter. They also incorrectly certified this class action since the notice requirement of Rule 23(c) was not satisfied. In addition, the arguments presented by respondents are incorrect, inaccurate and do not accurately display the facts and rules pertinent to the matter. In fact, many of the precedents cited

by the Respondents actually aid in proving the error made by the Court below. Also, Respondents urge that the true issues be ignored and that the Petitioners' claim of adequate notice be denied while attempting to distract the Court by bringing up issues purely technical in nature. This position ignores the stipulations required by the Federal Rules of Civil Procedure and Due Process.

ARGUMENT

I. THE DISTRICT COURT LACKED SUBJECT-MATTER JURISDICTION AND JURISDICTION OVER THE PERSONS OF THE CLASS AND IMPROPERLY CERTIFIED THE CLASS ACTION WITHOUT NOTICE REQUIRED BY FEDERAL RULE OF CIVIL PROCEDURE 23(c).

In the Court of Appeals, Petitioners sought reversal of the judgment on the grounds, *inter alia,* that the District Court lacked subject matter jurisdiction and jurisdiction over persons of the class members, that the class was improperly certified, and that notice given failed to meet the standards either of Fed. R. Civ. P. 23(c) or of due process. Those issues were raised in the District Court by motions filed by class members who, having received notice *after* the expiration of the opt-out period, were swept into the class without their knowledge or consent. One such motion is appended to this memorandum as illustrative.

The attack on the *judgment* made in the Court of Appeals and sought to be made in this Court is that as the District Court had no jurisdiction over the subject matter of the action or the persons of the plaintiff class members, it had no power to go to judgment, by settlement or otherwise. Moreover, the class was improperly certified without notice that satisfied the requirement of Rule 23(c) and of due process, illustrating that the District Court had no power to enter-

tain or to certify the class action. Without jurisdiction and without proper notice, the judgment is void. These issues were raised in the District Court and in the Court of Appeals, and are raised in the petition to this Court.[1]

II. RESPONDENTS' ARGUMENT THAT PETITIONERS HAVE NO STANDING TO ARGUE LACK OF SUBJECT MATTER JURISDICTION IS INCORRECT.

Respondents argue that petitioners have no standing to argue that subject-matter jurisdiction does not exist. As this Court well knows, subject-matter jurisdiction may be raised by any person at any time. Fed. R. Civ. P. 12(h)(3); *Insurance Corp. v. Compagnie de Bauxites,* 456 U.S. 694, 701-02 (1982); *Owen Equipment & Erection Co. v. Kroger,* 437 U.S. 365, 377 n.2 (1978), even by the person who invoked federal jurisdiction originally. *American Fire* & Casualty Co. v. Finn, 341 U.S. 6 (1951). One need not be the nondiverse party to raise the issue. Thus, the fact that Richard Pinkney was not nondiverse from any defendant is immaterial. Even if it were material, however, the result would be no different. The issue was raised by veterans who are citizens of Illinois who were nondiverse from Defendant Riverdale Chemical.

III. RESPONDENTS' ARGUMENT THAT PETITIONERS DO NOT CLAIM THEY DID NOT RECEIVE NOTICE IS UNTRUE.

Respondents also argue that petitioners do not claim that they did not receive notice. That just not true. Many peti-

[1]Respondent's reference (Br. in Opp. 1) to "all attorneys for veteran class member, including counsel for petitioners, had urged that the claims proceed in the class action context" is just not accurate. Sherman L. Cohn as well as the counsel who initially brought him into this case, Richard Steagall of Peoria, Illinois, and Ashcraft and Gerel did not so urge. Indeed, Mr. Steagall, among other counsel, urged to the contrary at every opportunity.

tioners did not receive notice at all until after the time to opt-out had expired and the settlement was announced three days later. (Appendix to this Memorandum at 3a, 4a.) The same is true concerning class certification. There were objections made as soon as veterans heard about the class action.

With respect, the fact that Ashcraft & Gerel, the law firm representing some class members, did not object until after the settlement was announced is irrelevant. Other attorneys representing other veterans who are among the petitioners raised those issues as soon as notice reached those veterans. (Appendix to this Memorandum at 2a-9a.) The fact that so many did not receive notice until after the settlement demonstrates the inadequacy of the notice.

IV. RESPONDENTS' ARGUMENT THAT DIVERSITY IS TO BE MEASURED IN A RULE 23(b)(3) CLASS ACTION SOLEY BY THE CITIZENSHIP OF CLASS REPRESENTATIVES IGNORES THE FACTS AND LAW WHICH ARE RELEVANT TO THIS MATTER.

Respondents' statement that there is "66 years of clear precedent that diversity is to be measured in a Rule 23(b)(3) class action solely by the citizenship of class representatives" ignores the facts and relevant law. *Supreme Tribe of Ben-Hur v. Cauble,* 255 U.S. 356 (1921), was *not* a Rule 23(b)(3) type class and thus is no precedent for the ruling of the court below. Indeed, as far as it may be such precedent, its vitality has been sapped (if in fact it has not been overruled entirely) by this Court in *Zahn v. International Paper,* 414 U.S. 291 (1973), and *Owen Equipment & Erection Co. v. Kroger,* 347 U.S. 365, 377 (1978). See J. Moore, *Moore's Federal Practice* (*Rules Pamphlets*), § 23.17, at 241-42 (5th Ed. 1987). The *dicta* in *Snyder v. Harris,* 394 U.S. 332, 341 (1968), and *United States ex rel. Sero v. Preiser,* 506 F.2d 1115, 1129 (2d Cir. 1974), cannot change the law.

V. THE TWO CASES CITED BY RESPONDENTS FOR THE PROPOSITION THAT MINIMAL DIVERSITY IS ALL THAT IS REQUIRED BY ARTICLE III OF THE CONSTITUTION ACTUALLY PROVE THE ERROR OF THE COURT BELOW.

Respondents cite two cases for the proposition that minimal diversity is all that is required by the Constitution, specifically Article III. Ironically, these cases prove the error made by the court below. In each case — *State Farm v. Tashire,* 386 U.S. 523 (1967), and *Twentieth Century Fox Film Corp. v. Taylor,* 239 F.Supp. 913 (S.D.N.Y. 1965) — the court relied upon specific statutes for a congressionally grafted exception to the requirement of complete diversity. In the words of this Court, it is the "legislative extension" of diversity that permits an exception to the complete diversity requirement used in these cases. *State Farm v. Tashire,* 386 U.S. at 531.

It is the lack of a statute in the instant case that forms the basis of this petition. Moreover, it is the lack of statute which demonstrates that the *dicta* in *Snyder v. Harris,* on which the Court relied so heavily, is not only dicta but is wrong. Finally, it is the lack of statute here that makes clear the pernicious effect of the decision of the court below. When added to the *dicta* in *Snyder v. Harris,* the ruling of the court below constitutes a recognition of a drastic extension of federal jurisdiction without statutory authorization. This drastic extension of jurisdiction must be reviewed by this Court.

VI. THE RESPONDENTS' ASSERTION THAT THE ORDER IS APPEALABLE IS NOT IN ACCORDANCE WITH RULE 54(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

The Respondents' Brief in Opposition to Certiorari at 11, *Pinkney v. Dow Chemical Co.,* No. 87-437 (1987) notes that a Fed. R. Civ. P. 54(b) certificate renders appealable an order

that otherwise would not be appealable. The reason that order would not be appealable, of course, is that the order is not final and is subject to revision by the court. Respondents call this a "technical" matter. As far as claiming that a party being in or out of a case is a technical matter, so is every diversity case where jurisdiction is defeated by the presence of a nondiverse party. That is this case.

VII. RESPONDENTS INCORRECTLY ARGUE THAT THE NOTICE ISSUE IS SOLELY ONE OF DISCRETION AND IGNORES THE FACT THAT THE FEDERAL RULES AND DUE PROCESS WERE NOT FOLLOWED.

Finally, Respondents argue that the notice issue is solely one of discretion. With respect, that is a misapprehension of the issue raised by the petition. Rather, the issue is one of failure to follow the requirements of Fed. R. Civ. P. 23(c) and of Due Process. The issue is also the clear failure of the Respondents to carry out the notice order of the district court — an issue which Respondents understandably fail to address. An error of this magnitude in such a highly visible case should not go unaddressed by this Court.

CONCLUSION

For the reasons detailed more fully in the petition, it is respectfully urged that a Writ of Certiorari be granted to review the judgment of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

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Dated: Washington, D.C.
December 9, 1987

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re "AGENT ORANGE" Product Liability Litigation	MDL No. 381
RONALD EDDLEMON, SR., Individually and as Father and Next Friend of RONALD EDDLEMON, JR., a Minor; J. MICHAEL SULLIVAN, Individually and as Father and Next Friend of REBECCA MARGARET SULLIVAN, a Minor; CHARLES WILLIAM WARD, Individually and as Father and Next Friend of SANDRA WARD, a Minor, CHARLES WARD, a Minor, NEIL WARD, a Minor, TONYA WARD, a Minor, and PHILLIP WARD, a Minor; and LARRY FETTERS and LILA FETTERS, Husband and Wife.	

MOTION FOR EXCLUSION FROM CLASS OF PERSONS BOUND BY PROPOSED SETTLEMENT OR ALTERNATIVELY, OBJECTIONS TO PROPOSED SETTLEMENT

Now come Plaintiffs, RONALD EDDLEMON, SR., Individually and as Father and Next Friend of RONALD EDDLEMON, JR., a Minor, J. MICHAEL SULLIVAN, Individually and as Father and Next Friend of REBECCA MARGARET SULLIVAN, a Minor, CHARLES WILLIAM WARD, Individually and as Father and Next Friend of SANDRA WARD, a Minor, CHARLES WARD, a Minor, NEIL WARD, a Minor, TONYA WARD, a Minor,

and PHILLIP WARD, a Minor, and LARRY FETTERS and LILA FETTERS, Husband and Wife, by their attorneys, RICHARD L. STEAGALL and JOHN P. NICOARA, and pursuant to this Court's apparent Order entered in connection with a purported settlement of the class action certified in this matter (as set forth in the Notice of Proposed Settlement of Class Action and Claim Form) hereby assert the following objections to the purported settlement of their claims for personal injuries arising out of exposure to Agent Orange:

1. Plaintiffs, RONALD EDDLEMON, SR., Individually and as Father and Next Friend of RONALD EDDLEMON, JR., a Minor, J. MICHAEL SULLIVAN, Individually and as Father and Next Friend of REBECCA MARGARET SULLIVAN, a Minor, CHARLES WILLIAM WARD, Individually and as Father and Next Friend of SANDRA WARD, a Minor, CHARLES WARD, a Minor, NEIL WARD, a Minor, TONYA WARD, a Minor, and PHILLIP WARD, a Minor, and LARRY FETTERS and LILA FETTERS, Husband and Wife, on July 18, 1984 have filed a certain action against the Defendants, THE DOW CHEMICAL COMPANY, a Corporation, MONSANTO COMPANY, a Corporation, UNIROYAL, INC., a Corporation; DIAMOND SHAMROCK CORPORATION, a Corporation, HERCULES, INCORPORATED, a Corporation, T-H AGRICULTURE & NUTRITION CO., INC., a Corporation and THOMPSON-HAYWARD CHEMICAL COMPANY, a Corporation, in the United States District Court, Central District of Illinois Peoria Divison, bearing Case No. 84-1248. A certificate copy of the Complaint is attached hereto as Exhibit F.

2. Plaintiffs move for exclusion from the proposed settlement of class action and any judgment this Court may enter thereon due to this Court's lack of jurisdiction over their per-

sons and lack of subject matter jurisdiction over their claims arising from exposure to Agent Orange.

3. None of these Plaintiffs were represented by their undersigned chosen counsel in the purported settlement of their claims tentatively agreed upon on May 7, 1984 by the management committee of Plaintiff's counsel for this class.

4. Only the Plaintiff, RONALD EDDLEMON, SR., received any notice of the pendency of the class action prior to the May 1, 1984 date for opting out of the class. (See Affidavit of RONALD EDDLEMON, SR. attached hereto as Exhibit A, Affidavit of J. MICHAEL SULLIVAN, attached hereto as Exhibit A, Affidavit of CHARLES WILLIAM WARD, attached hereto as Exhibit C, and Affidavit of LARRY FETTERS, attached hereto as Exhibit D and made a part of these objections.) Execution of LARRY FETTERS' Affidavit is being obtained and will be filed separately with this Court).

5. Two opinions of this Court dealt with the issues of whether the underlying actions filed herein should be certified as a class action under Rule 23 of the Federal Rules of Civil Procedure. This Court per Judge Pratt ruled on December 29, 1980 that this action would proceed as a class action under FRCP 23(b)(3) and left formal certification to be the subject of a separate Order. *In re Agent Orange Product Liability Litigation*, 506 F. Supp. 762, 791 (E.D.N.Y. 1980). On December 16, 1983, this Court per Chief Judge Weinstein certified a class of Vietnam-veteran plaintiffs for trial of the issue of the condition of the defendants' product, determination of the issues of general causation, resolution of the defendants' defenses of assumption of risk, misuse, and the government contract defense, and the issue of punitive damages. *In re Agent Orange Product Liability Litigation*, 100 F.R.D. 718, 723, 724, 729 (E.D. N.Y. 1983).

6. Neither of these Court opinions set forth any procedure whereby the individual damage claims of the claimants would be considered on a class action basis. In fact, Judge Pratt's opinion leaves open the question of whether the individual damage claims and issues of specific causation can be best resolved under the direct supervision of this Court or by remand of subclass actions to transferor courts for processing in ways appropriate to the circumstances of the subclasses. 506 F.Supp. at 786. Judge Weinstein's opinion makes no mention of resolution of the individual plaintiffs' damage claims and the issues of specific causation and in fact, specifically reserves the issue of specific causation for future resolution. 100 F.R.D. at 724.

7. In reliance upon the aforementioned opinions holding that class certification were for issues other than the individual plaintiffs' claims for damages and the issues of specific causation, the undersigned advised the Plaintiff, RONALD EDDLEMON, SR., to refrain from opting out of the class action. (See Affidavit of undersigned attached hereto as Exhibit E). None of the other Plaintiffs named herein had notice of this action at that time and had no opportunity to exercise a right to opt out of the class action certification. (See Affidavit attached as Exhibits A, B, C & D). LARRY FETTERS' Affidavit will be filed separately.

8. The undersigned Plaintiffs' counsel learned on May 7, 1984 through popular media reports that a purported settlement of the class action had been entered into. It was not until July 16, 1984 that the undersigned counsel received a copy of the Notice of Proposed Settlement of Class Action and Claim Form setting forth the details of the proposed settlement, despite his May 8, 1984 request to the clerk that such information be provided.

9. Plaintiffs intend to object to the transfer of the Central District of Illinois action they have filed to this Court, pursuant to the tag-a-long provisions of Rule 9 of the Rules of Civil Procedure of the Judicial Panel of Multi-District Litigation. Plaintiffs desire to pursue their individual claims in the Central District of Illinois; transfer is of no utility due to the proposed settlement of this multi-district proceeding.

10. Plaintiffs' undersigned attorney cannot evaluate the adequacy of the settlement in any detail as the details are presently unavailable to him; Defendants' assets and insurance coverage are said to be $9 billion to $16 billion and the best estimate of the special master appointed by order of this Court is that the number of claims may total 40,000 to 50,000. *In re "Agent Orange" Product Liability Litigation*, 100 F.R.D. at 727. If the represented number of 40,000 claimants is correct, the average available cash payment per claim is $4,500. Such is palpably inadequate compensation for these named Plaintiffs' injuries, and the undersigned suspects that it is palpably undercompensation for the injuries of other members of the class. The $4,500 per-claim figure does not take into account the attorneys fees and expense that must be awarded to members of the plaintiffs' class nor does it take into account management fees for management of the fund. While information is sketchy, it is clear that the purported $180 million settlement is woefully inadequate to settle the individual claims of the members of the class.

11. Plaintiffs' claims arise under the law of the State of Illinois; none of the named Plaintiffs have any contact with the State of New York or this Court beyond that thrust upon them by this broad-reaching class action certification purportedly made pursuant to this Court's diversity jurisdiction.

12. Plaintiffs object to this Court's purported exercise of jurisdiction over their person and over the subject matter of

their claims as contrary to the guarantees of due process of law set forth in the Fifth & Fourteenth Amendments to the Constitution of the United States. The purported exercise of jurisdiction over Plaintiffs by this Court violates constitutional guarantees of the Constitution of the United States in the following respects:

(a) No notice of suit was received by Plaintiffs, J. MICHAEL SULLIVAN, CHARLES WILLIAM WARD, and LARRY FETTERS until after the May 1, 1984 date for opting out of the class action had expired.

(b) Inadequate notice of the suit was received by the Plaintiff, RONALD EDDLEMON, SR., in that he received the Court-approved Notice of Pendency of Class Action during the week of March 16, 1984, a grossly inadequate period of time for his undersigned attorney to fully and completely evaluate the merits of opting in or opting out of said class.

(c) The Notice received by Plaintiff, RONALD EDDLEMON, SR., was inadequate in that it did not inform him with particularity of the representative plaintiffs and their attorneys intention to compromise plaintiffs' claims for damages in settlement of this class action.

(d) Plaintiffs have no contact with the State of New York, this Court's forum, nor do they consent to jurisdiction over their person in the forum of this Court.

(e) Plaintiffs have been denied the effective assistance of counsel guranteed to them by the Fifth and Fourteenth Amendments to the Constitution of the United States in that the attorneys of the Plaintiffs Management Committee who have purporteldy

settled their claims for damages have never considered any specific information concerning the Plaintiffs' injuries, nor have said Plaintiffs Management Committee attorneys ever specifically communicated with or acknowledged the existence of the named Plaintiffs herein.

(f) The representative plaintiffs in this class action and their attorneys are in a position of substantial conflict between their intersts and the interests of these named Plaintiffs.

(g) Plaintiffs' claims have been asserted in the lawsuit pending in the United States District Court for the Central District of Illinois under the laws of the State of Illinois in an Illinois forum, the Central District of Illinois sitting on a diversity case; this Court lacks any jurisdiction to force Plaintiffs to accept its versions of national consensus laws in a forum foreign to them and forced upon them.

(h) Plaintiffs will be denied a right to trial by jury of their claims at common law, which right is guaranteed to them by the Seventh and Fourteenth Amendments to the Constitution of the United States of America should this Court enter judgment on the purported settlement of this class action; instead of receiving their right to a trial by jury, these Plaintiffs must accept a bureaucratic adjustment of claims thrust upon them by this Court without authority from the Congress of the United States or the Legislature of the State of New York or of any other state of these United States of America.

13. The proposed settlement and any judgment entered thereon is voidable at the option of the minors named herein, RONALD EDDLEMON, JR., a Minor, REBECCA MARGARET SULLIVAN, a Minor, SANDRA WARD, a Minor,

CHARLES WARD, a Minor, NEIL WARD, a Minor, TONYA WARD, a Minor, and PHILLIP WARD, a Minor in that it is entered into by persons not authorized to act on the said minors' behalf and by a court without jurisdiction over the person or the subject matter of any settlement agreement of the Minors' claims. (Authenticated copies of the Orders of the Circuit Courts of Peoria and Tazewell County, Illinois finding it in the minors' best interests to reject the proposed class action settlement agreement are attached hereto as Exhibits G & H). A similar guardianship proceeding is being opened on behalf of REBECCA MARGARET SULLIVAN, a Minor, in the Circuit Court of Cook County, Illinois, the minor's county of residence.

14. Plaintiffs are filing a separate memorandum setting forth authorities in support of this motion.

WHEREFORE, Plaintiffs RONALD EDDLEMON, SR., Individually and as Father and Next Friend of RONALD EDDLEMON, JR., a Minor, J. MICHAEL SULLIVAN, Individually and as Father and Next Friend of REBECCA MARGARET SULLIVAN, a Minor; CHARLES WILLIAM WARD, Individually and as Father and Next Friend of SANDRA WARD, a Minor, CHARLES WARD, a Minor, NEIL WARD, a Minor, TONYA WARD, a Minor, AND PHILLIP WARD, a Minor; and LARRY FETTERS AND LILA FETTERS, Husband and Wife, move this Court to enter an order allowing them leave to opt out of the certified class instanter by the filing of this motion or alternatively, to sustain the objections to the settlement set forth below and exempt them from any judgment entered on this class action settlement barring litigation of further claims arising out of Agent Orange:

(a) The purported class action settlement and judgment is made without their consent, over their objections

by counsel whom they have rejected and who have been forced upon them by this Court.

(b) The purported class action settlement and proposed judgment is entertained in a forum with which they have no contact and in which they have not consented to jurisdiction over their person.

(c) The purported class action settlement and proposed judgment have denied them effective assistance of counsel in the presentation and evaluation of their claims for damages against the named Defendants.

(d) The purported class action settlement and proposed judgment denies without their consent personally or through any legislative enactment their constitutionally guaranteed rights to trial by jury of their claims in common law.

(e) The purported class action settlement and proposed judgment forces them to engage in complicated litigation in a forum not of their choosing to attempt to preserve their rights to try their cases under the

laws of the State of Illinois in the United States District Court for the Central District of Illinois.

RONALD EDDLEMON, SR., Individually and as Father and Next Friend of RONALD EDDLEMON, JR., a Minor; J. MICHAEL SULLIVAN, Individually and as Father and Next Friend of REBECCA MARGARET SUILLIVAN, a Minor; CHARLES WILLIAM WARD, Individually and as Father and Next Friend of SANDRA WARD, a Minor, CHARLES WARD, a Minor; NEIL WARD, a Minor, TONYA WARD, a Minor, and PHILLIP WARD, a MiNor; and LARRY FETTERS and LILA FETTERS, Husband and Wife, Plaintiffs

BY /s/ Richard L. Steagall
RICHARD L. STEAGALL, one of their Attorneys

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EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re "AGENT ORANGE" Product Liability Litigation	)	MDL No. 381
RONALD EDDLEMON, SR., Individually and as Father and Next Friend of RONALD EDDLEMON, JR., a Minor; J. MICHAEL SULLIVAN, Individually and as Father and Next Friend of REBECCA MARGARET SULLIVAN, a Minor; CHARLES WILLIAM WARD, Individually and as Father and Next Friend of SANDRA WARD, a Minor, CHARLES WARD, a Minor, NEIL WARD, a Minor, TONYA WARD, a Minor, and PHILLIP WARD, a Minor; and LARRY FETTERS and LILA FETTERS, Husband and Wife.	)	

AFFIDAVIT OF RONALD EDDLEMON, SR.

RONALD EDDLEMON, SR., being first duly sworn on his oath does hereby depose and state as follows:

1. He currently resides at Rural Route 2, North Murphy Road, near the Town of Hanna City, County of Peoria, and State of Illinois.

2. At no time during his life has he ever been physically present within the State of New York nor has he conducted any business with the State of New York on any basis nor

has he had any contacts whatsoever with the State of New York.

3. He first received notice of the possibility of the existence of any claims for personal injuries arising out of his exposure from Agent Orange some time after March 9, 1984 when he received a copy of the notice of the pendency of this class action by mail.

4. Upon receipt of the notice of pendency of this class action, he delivered the same to his personal counsel, DAVID H. McCARTHY, 911 First National Bank Building, Peoria, Illinois 61602. Attorney McCarthy referred the claims of the undersigned and his minor child for personal injuries arising out of exposure to Agent Orange to RICHARD L. STEAGALL and JOHN P. NICOARA for representation and pursuit of these claims.

5. Subsequent to interviews with Attorneys DAVID H. McCARTHY and RICHARD L. STEAGALL, the undersigned was informed that attorney Stegall journeyed to Brooklyn, New York, to review the Court records relating to this matter.

6. Upon return from Brooklyn, New York, the undersigned was advised by his attorney that it appeared that the class action would be tried on issues of liability, general causation, and defendants' defenses, but that individual claims for damages are preserved and would be tried at a later date elsewhere.

7. Based upon the advice of his counsel, RICHARD L. STEAGALL, the undersigned individually and on behalf of his minor child, RONALD EDDLEMON, JR., refrained from opting out of the class action.

8. The undersigned learned of the purported settlement of this class action by popular media accounts on or about May 7, 1984.

9. The undersigned has accepted the recommendation of his counsel, RICHARD L. STEAGALL, that the purported settlement of the class action claims are inadequate, has authorized his counsel to initiate suit on behalf of himself and his minor child in the United States District Court for the Central District of Illinois and has further authorized his counsel to object and reject any attempts to bind the undersigned's claims and those of his minor child to the settlement of this class action and to make all attempts to preserve his rights to try these claims before a jury in the Central District of Illinois.

FURTHER AFFIANT SAYETH NOT.

/s/ Ronald Eddlemon, Sr.
RONALD EDDLEMON, SR.

Subscribed and sworn to before me this 26th day of July, 1984.

/s/ (illegible)
Notary Public

EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re "AGENT ORANGE" Product Liability Litigation	MDL No. 381
RONALD EDDLEMON, SR., Individually and as Father and Next Friend of RONALD EDDLEMON, JR., a Minor; J. MICHAEL SULLIVAN, Individually and as Father and Next Friend of REBECCA MARGARET SULLIVAN, a Minor; CHARLES WILLIAM WARD, Individually and as Father and Next Friend of SANDRA WARD, a Minor, CHARLES WARD, a Minor, NEIL WARD, a Minor, TONYA WARD, a Minor, and PHILLIP WARD, a Minor; and LARRY FETTERS and LILA FETTERS, Husband and Wife.	

AFFIDAVIT OF J. MICHAEL SULLIVAN

J. MICHAEL SULLIVAN, being first duly sworn on his oath does hereby depose and state as follows:

1. He currently resides at 5415 Haymeadow, Apt. 2-B, in the City of Peoria, County of Peoria, and State of Illinois. His ex-spouse, PAMELA JORDAN, has custody of his minor child, REBECCA MARGARET SULLIVAN. They reside at 9016 West 140th Street in the City of Orland Park, County of Cook, and State of Illinois.

2. He served with the United States Armed Forces in Vietnam from December 26, 1966 through December 29, 1967.

3. He maintains no business in the State of New York nor does he have any contact whatsoever with the State of New York.

4. He first learned of the existence of a possible claim for personal injuries on his behalf and on behalf of his minor child, REBECCA MARGARET SULLIVAN, on April 24, 1984. He received no notice from this Court as to the existence of this class action.

5. On May 1, 1984, the undersigned retained RICHARD L. STEAGALL and JOHN P. NICOARA to represent him and his minor child in connection with any claims that may have arisen due to his exposure to Agent Orange in Vietnam. The undersigned has accepted the advice of his counsel, RICHARD L. STEAGALL, that this action should be litigated in the State of Illinois and further states that he has authorized his counsel to file the motion to seek exclusion from the class action settlement and also objects to the settlement and further authorizes and directs his said attorney to attempt to preserve his right to try any claims he may have against the named Defendants by a jury in the United States District Court for the Central District of Illinois.

FURTHER AFFIANT SAYETH NOT.

/s/ J. Michael Sullivan
J. MICHAEL SULLIVAN

Subscribed and sworn to before me this 27th day of July, 1984.

/s/
Notary Public

RICHARD L. STEAGALL
JOHN P. NICOARA
815 First Natl. Bank Bldg.
Peoria, Illinois 61602
Telephone: (309) 674-6085

EXHIBIT C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re "AGENT ORANGE" Product Liability Litigation	MDL No. 381
RONALD EDDLEMON, SR., Individually and as Father and Next Friend of RONALD EDDLEMON, JR., a Minor; J. MICHAEL SULLIVAN, Individually and as Father and Next Friend of REBECCA MARGARET SULLIVAN, a Minor; CHARLES WILLIAM WARD, Individually and as Father and Next Friend of SANDRA WARD, a Minor, CHARLES WARD, a Minor, NEIL WARD, a Minor, TONYA WARD, a Minor, and PHILLIP WARD, a Minor; and LARRY FETTERS and LILA FETTERS, Husband and Wife.	

AFFIDAVIT OF CHARLES WILLIAM WARD

CHARLES WILLIAM WARD, being first duly sworn on his oath does hereby depose and state as follows:

1. He currently resides at 200 Wilmore Road in the City of Washington, County of Tazewell, and State of Illinois.

2. He served with the United States Armed Forces in Vietnam from February, 1968 through February, 1969. Upon his return from Vietnam, he was assigned to duty at Fort Dicks, New Jersey, at which time he served out his ten years

in the United States Armed Forces. He received an honorable discharge from the United States Army on August 29, 1969 and he was terminated from the United States Army Reserves on August 29, 1973.

3. He had entered the City of New York during the time at which he was stationed at Fort Dicks, New Jersey, and he has not been physically present in the State of New York since that time; he conducts no business in the State of New York nor does he have any contact whatsoever with the State of New York. He is presently unemployed.

4. He first learned of a possible claim for personal injuries on his behalf and on behalf of his minor chilren, SANDRA WARD, CHARLES WARD, TONYA WARD, NEIL WARD, and PHILLIP WARD, shortly after the trial of this class action was set for May 7, 1984.

5. On May 16,1984, the undersigned retained RICHARD L. STEAGALL and JOHN P. NICOARA to represent him and his minor children in connection with any claims that may have arisen due to his exposure to Agent Orange in Vietnam. The undersigned has accepted the advice of his counsel, RICHARD L. STEAGALL, that this action should be litigated in the State of Illinois and further states that he has authorized his counsel to file the motion to seek exclusion from the class action settlement and also objects to the settlement and further authorizes and directs his said attorney to attempt to preserve his right to try any claims he may have against the named Defendants by a jury in the United States District Court for the Central District of Illinois.

BEST AVAILA

FURTHER AFFIANT SAYETH NOT.

CHARLES WILLIAM WARD

Subscribed and sworn to before me this ____ day of July, 1984.

Notary Public

RICHARD L. STEAGALL
JOHN P. NICOARA
815 First Natl. Bank Bldg.
Peoria, Illinois 61602
Telephone: (309) 674-6085

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EXHIBIT D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re "AGENT ORANGE" Product Liability Litigation	MDL No. 381
RONALD EDDLEMON, SR., Individually and as Father and Next Friend of RONALD EDDLEMON, JR., a Minor; J. MICHAEL SULLIVAN, Individually and as Father and Next Friend of REBECCA MARGARET SULLIVAN, a Minor; CHARLES WILLIAM WARD, Individually and as Father and Next Friend of SANDRA WARD, a Minor, CHARLES WARD, a Minor, NEIL WARD, a Minor, TONYA WARD, a Minor, and PHILLIP WARD, a Minor; and LARRY FETTERS and LILA FETTERS, Husband and Wife.	

AFFIDAVIT OF LARRY FETTERS

LARRY FETTERS, being first duly sworn on his oath does hereby depose and state as follows:

1. He currently resides with his wife, LILA FETTERS, at 220 North Lybarger in the City of Olympia, County of Thurston, and State of Washington.

2. He was born in Central Illinois and lived in the County of Woodford, State of Illinois until his graduation from high school and enlistment in the United States Army. He

was inducted in the United States Army in Chicago, Illinois in October, 1959

3. He served with the United States Army in Vietnam in the years 1976-1968.

4. He has never been physically present in the City of New York nor the State of New York, transacts no business in the State of New York, and has no contact whatsoever with the State of New York.

5. He had no specific knowledge about the existence of the possibility of his claims for injuries arising out of exposure to Agent Orange and his wife's claims for loss of consortium until after this class action was purportedly settled on May 7, 1984.

6. After he learned of the settlement of this class action and the possibility of the existence of a claim for personal injury, he decided to retain RICHARD L. STEAGALL as his attorney on a return visit to his home area in Peoria, Illinois.

7. On July 6, 1984, the undersigned retained RICHARD L. STEAGALL and JOHN P.NICOARA to represent him in connection with his claims for personal injuries that may have arisen due to his exposure to Agent Orange; his wife, LILA FETTERS, likewise retained said attorneys to represent her in connection with any c ims for loss of consortium she may have.

8. The undersigned has accepted the advice of his counsel, RICHARD L. STEAGALL, that the purported settlement of this class action in a an inadequate settlement of his claims, and that he puruse his claims in a form other than the United States District Court for the Eastern District of New York. He has directed his said attorney to object to his inclusion

in any class action settement or judgment that bars his rights to assert his claims for personal injuries arising out of exposure to Agent Orange in forums other than the State of New York had has instructed his undersigned attorney to pursue litigation of his claims in the action pending in the United States District Court for the Central District of Illinois.

FURTHER AFFIANT SAYETH NOT.

LARRY FETTERS

STATE OF WASHINGTON)
) SS.
COUNTY OF THURSTON)

Subscribed and sworn to before me this ____ day of July, 1984.

Notary Public

RICHARD L. STEAGALL
JOHN P.NICOARA
815 First Natl. Bank Bldg.
Peoria, Illinois 61602
Telephone: (309) 674-6085

APPENDIX E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re "AGENT ORANGE" Product Liability Litigation	MDL No. 381
RONALD EDDLEMON, SR., Individually and as Father and Next Friend of RONALD EDDLEMON, JR., a Minor; J. MICHAEL SULLIVAN, Individually and as Father and Next Friend of REBECCA MARGARET SULLIVAN, a Minor; CHARLES WILLIAM WARD, Individually and as Father and Next Friend of SANDRA WARD, a Minor, CHARLES WARD, a Minor, NEIL WARD, a Minor, TONYA WARD, a Minor, and PHILLIP WARD, a Minor; and LARRY FETTERS and LILA FETTERS, Husband and Wife.	

AFFIDAVIT OF RICHARD L. STEAGALL

RICHARD L. STEAGALL, being first duly sworn on his oat does hereby depose and state as follows:

1. He is an attorney at law licensed to practice in the States of Florida and Illinois, before the United States District Courts for the Middle District of Florida and the Central District of Illinois, the United States Court of Appeals for the Seventh Circuit, and the Supreme Court of the United States of America.

2. His first professional connection with the existence of this class action was a referral of RONALD EDDLEMON, SR. he received from Attorney DAVID H. McCARTHY on April 9, 1984, at which time RONALD EDDLEMON, SR. retained him to represent him in connection with his claims and the claims of his minor child, RONALD EDDLEMON, JR., for personal injuries arising out of exposure to Agent Orange.

3. Subsequent to being retained by RONALD EDDLEMON, SR., the undersigned journeyed to Brooklyn, New York on April 25, 1984 and conducted a review of the Court files located in the office of the Clerk of this United States District Court for the Eastern District of New York in Brooklyn, New York.

4. The Court files relating to this class action are extremely voluminous and the undersigned was unable to complete a detailed review of the Court files in the day's time that he was in the clerk's office in Brooklyn, New York.

5. In reliance upon this Court's opinion of December 16, 1983 certifying the class action for trial, the undersigned advised his client, RONALD EDDLEMON, SR., to refrain from opting out of the class action. This was based upon this Court's reservation of trial of the individual damage claims for future determination after the conclusion of the initial trial of the class action.

6. The undersigned first learned of the settlement of this class action on May 7,1984, but did not receive any detailed notice of this settlement until July 16,1984 when he received a Notice of Proposed Settlement of Class Action and Claim Form, despite his May 8, 1984 request of the Clerk of this Court that he receive copies of any proposed settlement documents.

7. The undersigned has never contacted any attorney for the Plaintiffs' Management Committee nor participated in any way in the prepartion of this class action.

8. The May 1, 1984 deadline for exercise of the right to opt out of this class action was unreasonably short and gave the undersigned an inadequate period of time in which to journey to this Court in Brooklyn, New York to take five days out of an extremely busy trial practice to engage in a detailed review of Court records relating to the class action.

9. In view of the insufficient time available to adequately and fully evaluate matters relating to this class action, the undersigned told RONALD EDDLEMON, SR. that the best advice available to him at that time was to refrain from opting out of this class action while fully conceding that the undersigned had inadequate basis to properly formulate such a professional opinion due to the unreasonably short period of time in which the decision to opt out of the class action was required.

FURTHER AFFIANT SAYETH NOT.

/s/ Richard L. Steagall
RICHARD L. STEAGALL

Subscribed and sworn to before
me this 27th day of July, 1984

/s/ Mary M.
Notary Public

RICHARD L. STEAGALL
JOHN P. NICOARA
815 First Natl. Bank Bldg.
Peoria, Illinois 61602
Telephone: (309) 674-6085